

REMARKS

Applicant has carefully reviewed the Office Action mailed November 13, 2007 and offers the following remarks to accompany the above amendments.

Status of the Claims

Claims 26-35 are pending in the present application. Claims 1-25 were previously cancelled. Claim 26 has been amended to correct a typographical error. Claims 32 and 34 have been amended to correct antecedent basis. No new claims have been added or cancelled. Accordingly, claims 26-35 remain pending.

§ 102(e) – Claims 26 and 28

Claims 26 and 28 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,240,280 B1 to Ravi et al. (hereinafter “Ravi”). Applicant respectfully traverses. For the Patent Office to prove anticipation, the Patent Office must show where each and every element of the claim is taught in the reference. Further, the elements of the reference must be arranged as claimed. MPEP § 2131. Anticipation is a strict standard, and the Patent Office has not satisfied its burden in the present application.

With respect to claim 26, Ravi fails to expressly or inherently disclose a recognition processor for: (1) receiving the audio signal from the CD player, (2) generating templates from the audio signal from the CD player, and (3) comparing the generated templates to one or more templates stored in a memory unit. Ravi discloses an audio system (10) where a microcontroller (11) can use a tuner (13) and auxiliary decoder (15) to monitor for traffic announcements or other information on one or more radio stations which a driver may desire during driving.¹ When the desired information is detected, the microcontroller (11) pauses a media player (18), such as a cassette tape player or compact disc player, and switches over to the radio station transmitting the desired information.² In contrast, in the claimed invention, a recognition processor receives an audio signal produced by a CD player, generates templates from the audio signal produced by the CD player, and compares the generated templates to one or more templates stored in an associated memory unit.

¹ Ravi, col. 2, lines 41-45.

² Ravi, col. 2, lines 37-39 and 45-49.

First, in rejecting claim 26, the Patent Office took the position that the microcontroller (11) of Ravi inherently receives an audio signal in order to detect and monitor incoming information such as traffic announcements, weather, or news.³ However, as discussed above, Ravi discloses a system that monitors one or more radio stations to detect a radio station transmitting desired information such as traffic announcements, weather, or news. In contrast, the claimed recognition process receives an audio signal produced by the CD player rather than an audio signal received via a broadcast radio station. As such, Ravi fails to disclose a recognition processor that receives an audio signal produced by the CD player.

Second, in rejecting claim 26, the Patent Office took the position that the microcontroller (11) of Ravi generates templates from an audio signal in that it monitors for a flag in the broadcast radio signal.⁴ In contrast, the claimed recognition process generates templates from the audio signal produced by the CD player. Thus, even if the flag of Ravi reads upon the claimed template, which Applicant does not concede, the flag is detected in the received broadcast radio signal rather than generated from an audio signal produced by the CD player. As such, Ravi fails to disclose a recognition processor that generates templates from the audio signal produced by the CD player.

Third, in rejecting claim 26, the Patent Office took the position that the microcontroller (11) of Ravi matches a generated template to one or more templates stored in memory.⁵ Once again, the Patent Office seems to be relying on teachings of Ravi to detect flags in the received radio broadcast signal as the claimed templates. However, as discussed above, the claimed templates are generated from the audio signal from the CD player rather than detected in a received broadcast radio signal. Since Ravi fails to disclose the claimed templates, Ravi also fails to disclose a recognition process that compares templates generated from the audio signal produced by the CD player to one or more stored templates. Since Ravi fails to disclose each and every element of claim 26, claim 26 is allowable.

Claim 28 is a dependent claim based indirectly upon claim 26. As such, claim 28 is allowable over Ravi for at least the same reasons given above with respect to claim 26. However, Applicant reserves the right to further address the rejection of claim 28 in the future, if needed.

³ Office Action mailed Nov. 13, 2007, page 2.

⁴ *Ibid.*

⁵ *Ibid.*

§ 102(e) – Claims 29 through 35

Claims 29-35 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,011,854 to Van Ryzin (hereinafter “Van Ryzin”).⁶ Applicant respectfully traverses. For the Patent Office to prove anticipation, the Patent Office must show where each and every element of the claim is taught in the reference. Further, the elements of the reference must be arranged as claimed. MPEP § 2131. Anticipation is a strict standard, and the Patent Office has not satisfied its burden in the present application.

Regarding claim 29, Van Ryzin fails to expressly or inherently disclose at least: (1) a means for generating a template from the audio signal produced by the means for producing the audio signal and (2) an adding means for adding the template to at least one of two or more sets of templates. More specifically, Van Ryzin discloses an audio processing system where a user enters a keyword such as “traffic,” “weather,” “time,” “sports,” or “news.”⁷ The system then monitors one or more radio stations for the entered keyword. When the keyword is detected, the system switches the audio output to the radio station on which the keyword was detected.⁸ In contrast, claim 29 is directed to an embodiment of the present invention where a means for producing an audio signal (ex. CD player, radio, etc.) produces an audio signal. A template is generated from the audio signal. While the user is listening to the audio signal, the user may activate a predetermined push button or buttons. In response to the activation of the predetermined button or buttons, the template generated for the audio signal is added to at least one of two or more sets of templates. For example, the user may activate a button or buttons when he or she likes the content of the audio signal. In response, the template generated for the audio signal is added to a set of templates of audio content that the user likes.

In rejecting claim 29, the Patent Office took the position that the claimed element of a means for generating a template from the audio signal is shown by Van Ryzin in that the audio processing system of Van Ryzin determines a keyword entered by the user.⁹ However, even if the keyword of Van Ryzin is read as the claimed template, which Applicant does not concede, the keyword is entered by the user rather than generated from an audio signal produced by an

⁶ Note that the Office Action mailed Nov. 13, 2007 initially states that claims 29-35 were rejected under 35 U.S.C. § 102(e) as being anticipated by Ravi (U.S. Patent No. 6,240,280). However, in the body of the rejection of claims 29-35, the Patent Office relied on Van Ryzin (U.S. Patent No. 6,011,854) rather than Ravi.

⁷ Van Ryzin, col. 2, lines 33-37 and col. 3, line 66 through col. 4, line 5.

⁸ *Id.* at col. 4, lines 6-28.

⁹ Office Action mailed Nov. 13, 2007, page 3.

associated means for producing the audio signal. As such, Van Ryzin fails to disclose a means for generating a template from an audio signal.

The Patent Office also took the position that the claimed element of an adding means for adding the template to at least one of two or more sets of templates is shown by Van Ryzin in that the audio processing system may receive keywords via a push button or speech recognition unit.¹⁰ Note that Van Ryzin only discloses using speech recognition with respect to analyzing radio stations. Van Ryzin does not teach using speech recognition to obtain keywords from the user. However, even if the keyword of Van Ryzin is read as the claimed template, which Applicant does not concede, Van Ryzin discloses only a single keyword rather than two or more sets of keywords. Even though the user in Van Ryzin may enter a keyword via any one of multiple input devices, the user can only enter a single keyword. Nowhere in Van Ryzin is it disclosed that the user may enter multiple keywords that are processed by the audio processing system. Further, even if Van Ryzin did teach multiple keywords, Van Ryzin still does not teach multiple sets of keywords. The mere fact that a keyword may be entered via one of multiple input devices does not mean that the keywords are stored as multiple sets of keywords. As such, Van Ryzin fails to disclose an adding means for adding a template to at least one of two or more sets of templates.

In light of the discussion above, Van Ryzin fails to disclose: (1) a means for generating a template from the audio signal produced by the means for producing the audio signal and (2) an adding means for adding the template to at least one of two or more sets of templates. Since Van Ryzin fails to disclose each and every element of claim 29, claim 29 is allowable.

Claims 30 and 31 are dependant claims based upon claim 29. As such, claims 30 and 31 are allowable for at least the same reasons that claim 29 is allowable. However, Applicant reserves the right to further address the rejections of claims 30 and 31 in the future, if needed.

Regarding claim 32, among other things, Van Ryzin fails to expressly or inherently disclose at least: (1) determining whether a user has indicated as dislike of the content associated with the audio signal and (2) adding the template to at least one of two or more sets of templates if it is determined that the user has indicated a dislike of the content associated with the audio signal. As discussed above, Van Ryzin discloses an audio processing system where a user enters

¹⁰ *Ibid.*

a keyword such as “traffic,” “weather,” “time,” “sports,” or “news.”¹¹ The system then monitors one or more radio stations for the entered keyword using an embedded speech recognition program.¹² When the keyword is detected, the system switches the audio output to the radio station on which the keyword was detected.¹³

In rejecting claim 32, the Patent Office took the position that the claimed element of determining whether a user has indicated a dislike of content associated with an audio signal is shown by Van Ryzin in that Van Ryzin discloses a system where the “user decides what type of report or information he/she want [sic] to hear.”¹⁴ As correctly stated by the Patent Office, Van Ryzin teaches a system where the user enters a keyword associated with content of interest to the user or, in other words, content that the user likes. However, Van Ryzin fails to teach determining whether the user has indicated a dislike of content associated with an audio signal. In fact, reading the keyword entered by the user in Van Ryzin as an indication of “dislike” would be counterintuitive. If the keyword of Van Ryzin is read as an indication of a “dislike” of the user, then the system of Van Ryzin would identify a radio station broadcasting content that the user dislikes and then switch to that station. This is counter to the teachings of Van Ryzin, which is to identify a radio station broadcasting content that the user likes or in which the user has expressed an interest. As such, Van Ryzin fails to teach the claimed element of determining whether a user has indicated a dislike of the content associated with the audio signal.

Van Ryzin also fails to disclose adding a template generated from the audio signal to a set of templates if it is determined that the user has indicated a dislike of the content associated with the audio signal. In rejecting this element of claim 32, the Patent Office stated that “keywords can be entered via a push button or speech recognition unit.”¹⁵ First, as discussed above with respect to the rejection of claim 29, the keyword of Van Ryzin is obtained from the user rather than from the produced audio signal (ex. audio signal from CD player, radio, etc.). Second, even if the keyword is read as the claimed template, which Applicant does not concede, Van Ryzin discloses only a single keyword rather than a set of keywords. Even though the user in Van Ryzin may enter a keyword via any one of multiple input devices, the user can only enter a single keyword. Nowhere in Van Ryzin is it disclosed that the user may enter multiple keywords

¹¹ Van Ryzin, col. 2, lines 33-37 and col. 3, line 66 through col. 4, line 5.

¹² *Id.* at col. 2, lines 6-9.

¹³ *Id.* at col. 4, lines 6-28.

¹⁴ Office Action mailed Nov. 13, 2007, page 4 (emphasis added).

¹⁵ *Ibid.*

that are processed by the audio processing system. The mere fact that a keyword may be entered via one of multiple input devices does not mean that multiple keywords can be entered and stored as a set of keywords. Lastly, Van Ryzin fails to disclose adding a template to a set of templates if a determination is made that the user has indicated a *dislike* of the content associated with the audio signal. Since Van Ryzin fails to disclose at least determining whether a user has indicated a dislike of the content associated with the audio signal and adding the template to at least one of two or more sets of templates if it is determined that the user has indicated a dislike of the content associated with the audio signal, claim 32 is allowable.

Claim 33 is a dependant claim based upon claim 32. As such, claim 33 is allowable for at least the same reasons that claim 32 is allowable. However, Applicant reserves the right to further address the rejections of claim 33 in the future, if needed.

Regarding claim 34, Van Ryzin fails to disclose at least adding a template to a set of templates if it is determined that the user has indicated a listening preference for the content associated with the audio signal. In rejecting this element of claim 34, the Patent Office stated that “keywords can be entered via a push button or speech recognition unit.”¹⁶ First, as discussed above, the keyword of Van Ryzin is obtained from the user and is therefore not a template generated from the audio signal as claimed. Since the keyword of Van Ryzin cannot properly be read as the claimed template, Van Ryzin fails to disclose the claim element of adding a template to a set of templates. Second, even if the keyword is read as the claimed template, which Applicant does not concede, Van Ryzin discloses only a single keyword rather than a set of keywords. Even though the user in Van Ryzin may enter a keyword via any one of multiple input devices, the user can only enter a single keyword. Nowhere in Van Ryzin is it disclosed that the user may enter multiple keywords that are processed by the audio processing system. The mere fact that a keyword may be entered via one of multiple input devices does not mean that multiple keywords can be entered and stored as a set of keywords. Since Van Ryzin fails to disclose each and every element of the claim, claim 34 is allowable.

Claim 35 is a dependant claim based upon claim 34. As such, claim 35 is allowable for at least the same reasons that claim 34 is allowable. However, Applicant reserves the right to further address the rejections of claim 35 in the future, if needed.

¹⁶ *Ibid.*

§ 103(a) – Claim 27

Claim 27 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Ravi in view of U.S. Patent No. 5,594,601 to Mimick et al. (hereinafter “Mimick”). Applicant respectfully traverses. To establish *prima facie* obviousness, the Patent Office must show where each and every element of the claim is taught or suggested in the combination of references. If the Patent Office cannot establish *prima facie* obviousness, the claims are allowable.

Regarding claim 27, the combination of Ravi and Mimick fails to teach or suggest at least causing a CD player to automatically skip to a next song if a stored template matches a template generated from an audio signal produced by the CD player. The Patent Office has admitted that Ravi fails to teach this claim element.¹⁷ In order to show this element, the Patent Office relied on Mimick and stated that “it would have been obvious to one of ordinary skill in the art, at the time of the invention, to implement the technique of Mimick within the system of Ravi in order to allow a user to program the communication device, and play only the desired track.”¹⁸

Mimick teaches a method that allows a user to program or edit, via keystrokes, a program or sequence of tracks to be played. Thus, at best, the combination of Ravi and Mimick teaches a CD player where the sequence of tracks to be played is programmed by the user. As the user defined sequence of tracks is played, the system of Ravi would monitor for desired information (traffic reports, weather, news, etc.) on one or more broadcast radio stations. When desired information is detected, playback on the CD player would be paused, and the audio output would be switched to the broadcast radio station transmitting the desired information. Nothing in Ravi, Mimick, or the combination of Ravi and Mimick teaches or suggests a recognition process that receives an audio signal from a CD player, generates templates from the audio signal produced by the CD player, compares the generated templates to one or more stored templates, and causes the CD player to automatically skip to a next song if one of the generated templates matches one or more of the stored templates. As such, claim 27 is allowable.

Rejection for Double Patenting

Claims 26-35 were rejected on the grounds of non-statutory obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 6,704,553 B1 to Eubanks

¹⁷ *Id.* at page 5.

¹⁸ *Ibid.*

(hereinafter "Eubanks"). Applicant will submit a terminal disclaimer upon the indication by the Patent Office that claims 26-35 are otherwise allowable.

Conclusion

The present application is now in condition for allowance and such action is respectfully requested. The Examiner is encouraged to contact Applicant's representative regarding any remaining issues in an effort to expedite allowance and issuance of the present application.

Respectfully submitted,

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By:

A handwritten signature in black ink, appearing to read "R. Chad Bevins", written over a horizontal line.

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